

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ANDREW TOLIVER,  
TDCJ No. 1715875,

Plaintiff,

V.

DAVID GUTIERREZ, ET AL.,

Defendants.

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No. 3:20-cv-3394-E-BN

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case as to the construed motion for leave to amend after dismissing of the initial complaint [Dkt. No. 3] (the FCR).

No objections were filed. The District Court reviewed the proposed findings, conclusions, and recommendation for plain error. Finding none, the Court ACCEPTS the FCR.

Leave to amend is therefore DENIED.

The Court also DENIES the motion for leave to proceed *in forma pauperis* (IFP) [Dkt. No. 4] and prospectively CERTIFIES, under 28 U.S.C. § 1915(a)(3), and as fully explained in the FCR [Dkt. No. 5], that any appeal that Plaintiff may take would not be taken in good faith.

And the Court notifies Plaintiff that he may challenge this finding under *Baugh v. Taylor*, 117 F.3d 197 (5th Cir. 1997), by filing a separate motion to proceed IFP on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit,

within 30 days of this order.

SO ORDERED this 22n day of December, 2020.

A handwritten signature in black ink, appearing to read "Ada Brown", written over a horizontal line.

ADA BROWN  
UNITED STATES DISTRICT JUDGE